



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
)  
) ISCR Case No. 11-06443  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

04/30/2012

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On October 20, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated August 23, 2011, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and

the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on August 31, 2011.

Applicant answered the SOR in an undated response received at DOHA on September 23, 2011. She admitted all of the allegations under Guideline F. Department Counsel was prepared to proceed on December 9, 2011, and the case was assigned to me on January 12, 2012. DOHA issued a Notice of Hearing on February 6, 2012, scheduling a hearing for February 29, 2012. Department Counsel notified Applicant of the hearing date on January 12, 2012, and the official Notice of Hearing was received on February 13, 2012. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified and offered one exhibit that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A. I left the record open for Applicant to submit additional documents. Applicant timely and separately submitted two additional documents that I marked and admitted into the record as App. Ex. B and C. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 6, e-mail, dated March 20, 2012; Gov. Ex. 7, e-mail, dated April 25, 2012) DOHA received the transcript of the hearing (Tr.) on March 15, 2012.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 31-year-old cable harness assembler for a defense contractor. She has been employed with the defense contractor since November 2010. Applicant is married with two children born in 2002 and 2007. She and her husband married in 2000, separated in 2005, divorced in 2007, and remarried in 2007. However, during the entire period, they lived together. At the time, Applicant's husband worked in his family's business as a mechanic. The business closed and her husband was unemployed for about six months in 2006/2007. He was unemployed again for six months in 2008 when he was laid off from his job. Her husband is now employed as an engineering technician with a diesel engine company. Applicant was unemployed from April 2009 until November 2010. The couple's lack of income caused an inability to make an increased mortgage payment as well as pay medical debts.

Applicant and her husband have a combined monthly income of approximately \$2,500, but have monthly expenses of approximately \$2,700. They are able to keep current with their monthly expenses with help from their families. After May 2012, they will no longer need to pay full expenses for their young son's child care and they will realize an additional \$300 monthly for discretionary income. They are now looking for a less expensive house to rent in their children's same school district. Both are also seeking part-time employment to supplement their income. With the funds generated from lower child care costs, they will have sufficient funds to meet their monthly expenses. Their cash flow will also be assisted by lower expenses and additional income. (Tr. 12-16)

Credit reports, of November 11, 2011 (Gov. Ex. 3); June 30, 2011 (Gov. Ex. 4); and November 13, 2010 (Gov. Ex. 5); as well as Applicant's answers to the Interrogatory (Gov. Ex 2, dated July 20, 2011), show the following delinquent debt for Applicant: medical accounts in collection for \$474 (SOR 1.a), \$447 (SOR 1.d), \$204 (SOR 1.e), \$190 (SOR 1.f), \$145 (SOR 1.g), \$35 (SOR 1.h), \$30 (SOR 1.i), \$57 (SOR 1.j), \$35 (SOR 1.k), \$40 (SOR 1.l), \$48 (SOR 1.m), \$48 (SOR 1.n), \$40 (SOR 1.o), \$350 (SOR 1.p), \$79 (SOR 1.q), \$42 (SOR 1.r), \$54 (SOR 1.s), \$42 (SOR 1.t), \$51 (SOR 1.u), \$64 (SOR 1.v), \$35 (SOR 1.w), \$34 (SOR 1.x), and \$180 (SOR 1.y); an account in collection for \$710 that may be a medical account (SOR 1.b); a collection account that may be a medical account for \$698 (SOR 1.c); a credit union account for \$56,359 (SOR 1.z); a collection account for \$593 that may be a medical account (SOR 1.aa); and a telephone account in collection for \$670 (SOR 1.bb). No payments have been made of any of these debts.

Applicant and her husband built a house together starting in 2004. It was completed while they were separated in 2005. However, they both lived in the house. The original monthly loan payment on the adjustable rate mortgage was approximately \$1,125. The original rate was adjusted about six months after they moved into the house and the monthly payments increased to \$1,800. There was also an equity loan (SOR 1.z) with monthly payments of \$300. Their decreased income from unemployment did not permit them to make these house payments. They lived in the house until it was sold at a short sale in August 2007. This sale satisfied the primary mortgage of approximately \$300,000. The largest debt in the SOR for \$56,359 (SOR 1.z) is for the home equity loan used as part of the down payment for the purchase of the house. It was not satisfied by the short sale. Applicant and her family now live in an apartment which rents for \$950 monthly. (Tr. 15-16)

Applicant's husband carried health insurance for the family when he was employed. When he was unemployed, the family did not have health insurance coverage. There were always numerous trips to doctors because of the two small children. The medical debts were incurred when the family did not have health insurance or were unable to pay the required co-pays when they had insurance because of low income. (Tr. 20-22)

Applicant and her husband consulted a financial adviser in 2012, and decided to file a Chapter 7 bankruptcy to resolve their debts. The bankruptcy was filed in March 2012. The debts listed in the SOR are included in the bankruptcy filing. The bankruptcy has not been completed and the debts have not yet been discharged. (Tr. 22-23; App. Ex. B, Letter, dated March 14, 2012; App. Ex. C, Schedule F, Bankruptcy Filing)

Applicant's supervisor/manager testified that Applicant is a good employee. She is consistent, comes to work on time, and her work product is good. He considers her to be reliable, trustworthy, and with good judgment. (Tr. 33-35) Applicant's technical team lead wrote that he has supervised Applicant since May 2011. She has met every task assigned and is a valued asset to the organization. He believes she is trustworthy and reliable. (App. Ex. A, Letter, dated February 29, 2012)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations:**

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

(AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts established by credit reports and Applicant's admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems because of low income and unemployment for both her and her husband.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) and AG ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances). Most of the debts were incurred starting in the early 2000s when Applicant and her husband had marital issues, unemployment, and low income. At times, they also did not have health insurance. Since the debts have not been paid, the debts are recent and current. The combination of circumstances causing the delinquent debts was unusual and beyond her control. The debts were not from frivolous spending but mostly caused by the medical needs of her two small children. Applicant established that she is acting responsibly to resolve her debts. She filed a Chapter 7 bankruptcy to resolve her debts. Her finances are being resolved and are under control. AG ¶¶ 20 (a) and (c) apply.

I considered AG ¶ 20(d). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has not paid any of her older debts. Her current debts are paid as agreed. She has recently filed a Chapter 7 bankruptcy as the means of resolving the debts. The bankruptcy is not completed and the debts have not been discharged. Bankruptcy is a reasonable, legal, and permissible means of resolving debt. In Applicant's financial circumstance, it is a prudent and honest way to adhere to her duty to resolve her financial obligations. The filing of the bankruptcy is, therefore, a good-faith effort to resolve her debts. Applicant and her husband both now have steady and good employment. She is well-regarded by her employer. Even though at present their monthly expenses exceed their income, they have not incurred additional delinquent debt because of help from their families. With reduced expenses in the near future, their

income will exceed their expenses and they will be able to live within their means. It is unlikely that Applicant will incur additional debts. AG 20(d) applies because Applicant established that she is acting responsibly towards her debts and that the debts are under control. In sum, Applicant presented sufficient information to mitigate security concerns for financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The overwhelming majority of Applicant's delinquent debt is for medical care for her children, and the debt associated with the purchase of a house. Her present failure or inability to live within her means, to satisfy her debts, or meet her financial obligations is not because of poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. She was caught in the perfect storm of a poor job market and a national housing crisis causing her to sell her house at a short sale. She and her husband had periods of unemployment and low income jobs. These circumstances do not raise questions about her reliability, trustworthiness, and ability to protect classified information. She has not been financially irresponsible, which shows that she will be responsible, concerned, or careful with her obligations to protect classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations. Access to classified information is granted.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a – 1.bb:

For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge